THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16448 OF 2006

DATED: 29 -03-2007

Between :

Pasanagulapati Krishna Rao ... Petitioner

And

1. The Commissioner of Prohibition & Excise, Hyderabad., And 2 others. ... Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16448 OF 2006

ORDER :

The petitioner herein was granted a licence in Form A-4 under the provisions of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules') for the period 2006-08 for the sale of Indian-made Foreign Liquor in respect of Chinthanaki Village and Mandal of Khammam District notified at Sl.No.94 being the successful bidder in the auction conducted pursuant to the tender notice dated 25-7-2006 issued by the District Collector, Khammam under Rule 5 of the Rules. It is not in dispute that the auction in respect of some of the shops notified in the said tender notice dated 27-5-2006 could not be concluded for various reasons. The said shops included the shop at Bodu Village of Tekulapally Mandal notified at Sl.No.115 in the Auction dated 27-5-2006. While so, the District Collector, Khammam District issued a fresh auction notice dated 31-7-2006 proposing to conduct auction on 7-8-2006 for grant of lease of right to sell Indian-made Foreign Liquor by shop for the lease period 2006-08 in respect of the some of the undisposed shops including the shop at Bodu Village notified at Sl.No.115 in the tender notice dated 27-5-2006. However, surprisingly under the fresh tender notice dated 31-7-2006 the said shop containing Gazette Sl.No.115 was shifted/relocated to Nagulavancha Village of Chinthanaki Mandal. Aggrieved by the said action in proposing to shift/relocate the shop notified at Sl.No.115 from Bodu Village, Tekulapally Mandal to Nagulavancha Village of

Chinthanaki Mandal, this writ petition is filed.

The contention of the petitioners is that since the location of shops was fixed by the Commissioner of Prohibition & Excise before publication of the Auction Notice dated 27-5-2006 under Rule 5 of the Rules, the respondents have no power to shift/relocate the said shops to a different area for the purpose of the fresh auction proposed to be conducted under the Notification dated 31-7-2006. While pointing out that in exercise of the powers conferred under Rule 4 of the Rules the Commissioner of Excise had issued a Circular dated 25-5-2006 fixing the number of shops as well as the location of the same on the basis of which the respective District Collectors-cum-Auctioning Authorities issued the Auction Notices dated 27-5-2006, the number and location of the shops so fixed by the Commissioner of Prohibition & Excise cannot be altered on any ground whatsoever in the absence of any provision under the A.P. Excise Act or the Rules made thereunder empowering the respondents to do so.

In the counter-affidavit filed on behalf of the respondents, it is stated that having regard to the fact that some of the shops notified in the Auction Notice dated 27-5-2006 remained undisposed in various Districts, the Commissioner of Prohibition & Excise vide proceedings dated 27-6-2006 issued instructions to issue notifications for re-tendering the left over shops. The Commissioner of Prohibition & Excise had also relocated the shops after ascertaining the reports from the concerned Station House Officer and Assistant Prohibition & Excise Superintendent and pursuant thereto new areas were notified under the fresh Auction Notice dated 31-7-2006. The said shops were accordingly finalized and the successful bidders were granted licences in Form A-4. It is also contended that shifting of area/relocation of the shops to new areas has not affected the business of the petitioners or any other licensee and at any rate since the petitioners cannot claim any fundamental right in the matter of trading in liquor which is exclusively a matter of privilege granted by

the Government the writ petitions are misconceived and liable to be dismissed.

The successful bidder in the auction conducted pursuant to the fresh notification dated 31-7-2006 who was granted Form-A4 licence and got himself impleaded as the third respondent filed a counter-affidavit stating that the Commissioner of Prohibition & Excise is empowered under Section 3 of the A.P. Excise Act, 1968 read with Rule 4 of the Rules to fix the number of shops to be established in an area/locality which includes power to relocate any shop in an area/locality basing on the circumstances of the case. It is further stated that pursuant to the notification dated 31-7-2006 he became the highest bidder for a sum of Rs.12,94,444/- against the upset price of Rs.9,92,444/-. Thus, there was an increase of Rs.3,02,000/-. He was also granted licence and running the business and the same will not affect the business of the petitioner at Chinthanaki Village which is at a distance of 10 kms from Nagulavancha Village.

I have heard the learned Counsel for both the parties in detail.

For proper appreciation of the rival contentions raised by the learned Counsel for the parties, it is necessary to note the relevant statutory provisions governing the grant of lease of right to sell Indian Liquor and Foreign Liquor.

In exercise of the powers conferred by Section 72 read with Sections 17, 28 and 29 of the A.P. Excise Act, 1968, and Ordinance 5 of 2005, the Governor of Andhra Pradesh made the Rules called the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules'). The said Rules issued under G.O.Rt.No.998, Revenue (Ex.II) Department, dated 24-5-2005, are made applicable for the grant of privilege by shop, conditions governing thereof and transport of Indian Liquor and Foreign Liquor by the leaseholder. Rules 3, 4 and 5 of the said Rules which provide for grant of lease of right to sell Indian Liquor and Foreign Liquor and for establishment of shops run as under :

*"**3. Lease of Right to sell Indian Liquor and Foreign Liquor :***

Subject to the provisions of these rules the grant of lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public after due notification. The lease shall be for a period of one year or part thereof.

Provided that where the Commissioner considers it expedient to grant the lease of right to sell Indian Liquor and Foreign Liquor by shop in any other manner, he shall for the reasons to be recorded in writing, do so.

4. Establishment of Shops:-

The Commissioner of Proh. & Excise having due regard to requirement, public order, health, safety and other factors as thinks fit, may fix the number of shops to be established in an area/locality before the publication of the Auction Notice under Rule 5.

5. Auction Notice :

(1) Where it is proposed to grant the lease for sale of Indian Liquor and Foreign Liquor by shop a notice of the proposed auction containing the particulars mentioned in sub-rule (2) shall be published, at least (7) seven days in advance of the date of auction, by the Collector of the District in the District Gazette or in such other manner as the Collector may deem fit.

(2) The auction notice shall contain the following particulars :

(i) Serial Number and the name of the area / locality where the shop will be established.

(ii) The last date, time and place for receipt of tenders;

(iii) The place of auction with time and date;

(iv) The conditions governing the auction;

(v) The lease period and

(vi) Any other matter which may be considered necessary by the auctioning authority."

A combined reading of the above Rules makes it clear that the lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public. Before issuing such auction notice, the Commissioner of Prohibition &

Excise has to fix the number of shops to be established in an area/locality. It is also relevant to note that Rule 5 of the Rules specifies the particulars to be mentioned in the auction notice which include the name of the area/locality where the shop will be established.

In the case on hand, it is not in dispute that the Commissioner of Prohibition & Excise, A.P., Hyderabad having considered the requirement of the localities and other relevant factors issued the Circular dated 25-5-2006 fixing the number of shops to be established. On the basis of the said proceedings, the District Collector, Khammam issued the auction notice dated 27-5-2006 inviting sealed tenders from the public for grant of leases by shop in Khammam District. Pursuant thereto, leases were granted to the successful bidders in respect of many areas including the writ petitioner. However, for various reasons, the shops identified in some of the areas remained undisposed which were proposed to be auctioned under the impugned notification by relocating the shops to different areas. The question is whether such relocation/shifting is permissible under law.

At the outset, it is to be noted that Rule 21 of the Rules which provides for such a situation runs as under :

> *"**21. Sale by outlets of A.P.B.C.L. and the Distillery/Brewery Licenceholders:-** (1) The auctioning authority with the approval of the Commissioner of Prohibition & Excise may permit the A.P.B.C.L. or a holder of a Distillery/Brewery licence under the Act to open outlets for the sale of IL & FL in such areas/localities where the privilege of sale by shop could not be disposed off in the auction or when a lease already granted is cancelled and the same could not be re-auctioned for any reason.*
>
> *(2) The Commissioner of Prohibition and Excise may permit the A.P.B.C.L. to open outlets for the sale of IL & FL anywhere in the State whenever he deems necessary in public interest."*

On a plain reading of the above provision, it is clear that in case the privilege of sale by shop is not disposed off in the auction for any reason, the auctioning authority, with the approval of the Commissioner of Prohibition & Excise has to permit the A.P.B.C.L. or the Distillery/Brewery Licence-holder under the Act to open outlets for sale of IL & FL in such areas.

In certain circumstances, re-auction of the right of sale in the areas/localities already identified by the Commissioner of Prohibition & Excise is also permissible as provided under Rule 20. However, there is absolutely no provision under the Rules empowering either the auctioning authority or the Commissioner of Prohibition & Excise to relocate the shop identified under Rule 4 to another locality/area for the purpose of conducting fresh auction on any ground whatsoever.

Even Sub-rule (3) of Rule 29 of the Rules which provides for shifting of the licensed premises i.e., after granting the lease to the successful bidder, cannot be made applicable to relocation of the shop originally identified in a particular area for the purpose of reauction. Hence, the mere fact that the Commissioner of Prohibition & Excise had issued a circular dated 25-6-2006 relocating the undisposed off shops does not validate the impugned auction notification since such relocation cannot be traced to the power conferred under Rule 4 or any other provision.

In identical circumstances, W.P.No.215 of 2007 has been allowed by this Court by order dated 1-3-2007 thereby declaring the licences granted pursuant to the fresh auctions after relocating the shops as arbitrary and illegal.

For the aforesaid reasons, the Writ Petitions is allowed as prayed for. No costs.

G. ROHINI, J.

Dt. 29-3-2007
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